IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITON NO.6565 OF 2005

Salim Kumar .. Petitioner

v/s.

Smt.Sayeeda Begum Mohammed Yunus.. Respondent

Mr.Ajay Panieker for the petitioner.

Mr.M.V.Upadye with Mr.V.B.Ranade for the respondent.

CORAM : SMT.NISHITA MHATRE, J.

DATED : 3rd October, 2005

P.C.

The order challenged in this petition is an order dismissing the notice taken out by the petitioner for amending the plaint. The petitioner is the son of the original plaintiff-landlord. The suit was filed by the original plaintiff against the respondent on several grounds including the ground of bonafide and reasonable requirement of the suit premises under section 13(1)(g) of the Bombay Rent Act. The suit has been dismissed. During the pendency of the suit, the original landlord expired and the present petitioner is now prosecuting the matter.

2. The appeal has been filed against the dismissal of the suit. The petitioner came to know of the fact that the respondent had paid certain amounts in order to acquire the premises in Dadar area and therefore, he sought amendment of the pleadings. By the amendment the petitioner wanted to place on

record the fact that the respondent had paid an amount of Rs.4 lacs for acquisition of the premises in the year 2003-3004. The petitioner also wished to plead certain details in respect of the other grounds on which the suit was based.

3. The appeal court has refused permission to amend the plaint on the ground that the evidence cannot be taken on record as subsequent events cannot be considered.

4. In my view, this approach of the appeal court cannot be accepted. The additional pleadings which the petitioner desires to place on record are with respect to the facts which had occurred after the suit was disposed of and therefore, the appeal court should have allowed the interim notice. Whether the pleadings would constitute a ground for ejectment under section 13(1)(g) is for the court to decide.

5. The petition is, therefore, allowed. The order of the appeal court is set aside. The interim notice No.257/2005 in Appeal No.164/2003 in RAE Suit No.542/1210 of 1992 is made absolute. Amendment to be carried out within four weeks from today.

6. The respondent is at liberty to file additional written statement to contest the new grounds taken by the amendment within four weeks thereafter.

(SMT.NISHITA MHATRE, J.)